

Approved as Submitted: March 19, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MARCH 5, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:04 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang and Mayor/Chairperson Kennedy
Late: Council/Agency Member Sellers (arrived at 6:55 p.m.)
Absent: Council/Agency Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

EXISTING LITIGATION:

Case Title: Kennedy et al. v. Davis et al.

Case Name/No.: Santa Clara County Superior Court Case No. CV 803679

Attendees: City Manager, City Attorney, Special Counsel Matt Jacobs

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code Section 54965.9(a)

Case Name: Morgan Hill Unified School District v. Minter & Fahy

Case No.: Santa Clara County Superior Court, No. CV 772368

Attendees: City Council, City Manager, City Attorney, Special Counsel Mark Strombotne,

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Government Code section 54956.9(a)
Case Name:	City of Campbell et al. v. CalPERS
Case Number:	OAH 5119
Attendees:	City Attorney, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/ Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:05 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/ Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Planning Commission Chairman Acevedo led the Pledge of Allegiance.

RECOGNITIONS

The Certificates of Recognition to Steve Woodson, Steve Fuentes, Stan Shepherd, David Masuda, Ethan Salzano, Ryan Shepherd, Stephen Woodson, Jr., and Shawn Fuentes in recognition of their outstanding efforts in attempting to save the lives of others; for which they have been awarded the Heroism and Meritorious Action Awards for Boy Scouts were deferred to a future meeting.

PRESENTATIONS

The presentation of a plaque to be made by Mr. Rudy Padre, of 3-Com Corporation, in honor of the 3-Com Urban Challenge Grant Program: Using Data to Inform Instruction was deferred to a future date.

The presentation by Brittany Bach, Youth Advisory Committee Member, was deferred to later on the agenda.

CITY COUNCIL REPORT

Mayor Pro Tempore Chang reported that the Cities Association Legislative Task Force has taken several items into consideration; one being a bill to be introduced relating to Redevelopment and Cities. Assembly Bill AB1358 will address sharing housing credits with adjoining cities. She distributed information relating to AB1358 to the Council and requested that Council Members forward comments to her and that she would forward these comments to the Legislative Task Force. She indicated that City Manager Tewes will be taking this bill to the California Redevelopment Agency Association, seeking their opinions and support. She stated that there are three other legislative issues that the Task Force is looking into; 1) a split roll tax; and 2) 55% voters to approve a tax measure. These two issues are being taken up by the Cities Association and that there may be legislative action that the Association would push forward. She stated that ABAG's MTC combining issue is not being promoted extensively within the Cities Association at this time.

COUNCIL SUB-COMMITTEE REPORTS

Council Member Carr indicated that the Measure P Update Task Force met last night and finished phase 1 of their work. He said that the Task Force has finished going through the entire Residential Development Control System, making suggestions and comments on how to update it. He stated that the recommended modifications will be forwarded to the City Attorney's office in order to take a look at the legal language. Also to be conducted this month is a public survey to receive opinions from the public. The Task Force will return in April with a community workshop. The Task Force will meet again in April to review the results of the survey, the language from the attorneys, and the results of the public workshop to make final adjustments before moving forward to the Planning Commission.

Council Member Sellers indicated that at the last meeting, he announced that the Downtown Task Force was also wrapping up its work. He stated that the Task Force should be receiving the report at the end of the week and that the Task Force is planning a final wrap up meeting this month on the report as well.

Mayor Kennedy said that Urban Limit Line Committee will be holding its first meeting on March 12 at 7 p.m. The Committee will be looking at the entire City and where it wants to grow the next 50 years, consistent with the General Plan Policies and the General Plan.

CITY MANAGER REPORT

City Manager Tewes reported on the City's water system. He noted that in recent months, there has been considerable attention given to the issue of perchlorate in drinking water. This arises out of the situation that the California Department of Health Services changed the rules, lowering the action levels of contaminate of perchlorate. He said that it became clear that the plume from perchlorate emanating from the Olin Corporation site had extended extensively to the south. In light of this fact, City staff took actions that were more than minimally required by State regulations. He stated that when the two samples for the Tennant wells came in on average higher than the action level, the City closed the

Tennant Well as it was a prudent thing to do and that it remains closed. City staff also began a rigorous periodic testing of all of the City's well. He stated that in previous reports, he was able to report to the Council that all of the City's wells had no detectable levels of perchlorate. Therefore, the City is delivering water that is safe and meets State standards. He indicated that the most recent February testing results had ambiguous results for two of the City's wells: Nordstrom and Condit wells. When staff took the required two samples for these wells, staff found that on average they were below the action levels. However, one of the samples was slightly above the action level. Although not required to do so, staff took these wells off line as of last week and that staff will begin a more frequent testing regiment to see what is taking place in this regard. He assured the Council and the community that the City is continuing to deliver water that meets or exceeds state standards. He requested that the Director of Public Works provide the Council with more details about this issue.

Director of Public Works Ashcraft assured the citizens of the community that City staff is doing all that it can to ensure the quality of water in Morgan Hill. He read into the record a report prepared relating to the City's testing of all active City wells for perchlorate. This followed the January 16, 2003 test which resulted in no perchlorate detection in wells as an extra measure to ensure the safety of drinking water to citizens, including regular testing and monitoring of wells.

Mayor Kennedy requested that staff make a presentation at a future Council meeting of the City's water system, its layout, and operations so that the Council can understand how the City's water system is put together and how it operates.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

PUBLIC COMMENT

Dave Vaughn informed the City Council and Planning Commission that he is the new general manager for South Valley Disposal and Recycling and that he looks forward toward working with the City of Morgan Hill and all the cities which South Valley Disposal serves.

ADJOURN TO JOINT CITY COUNCIL/PLANNING COMMISSION MEETING

Mayor/Chairman adjourned the meeting to the Special Joint City Council/Planning Commission meeting at 7:30 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 8:18 p.m.

PRESENTATIONS (Continued)

Brittany Bach addressed the Healthy Community/Youth Conference sponsored by the Search Institute and Project Cornerstone held in Minneapolis, Minnesota.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Items 1-7 as follows:*

1. **AGREEMENT WITH THE LAW FIRM OF LIEBERT CASSIDY WHITMORE**

Action: ***Authorized** the City Manager to Execute an Agreement with the Law Firm of Liebert Cassidy Whitmore.*

2. **ACCEPTANCE OF THE CITY OF MORGAN HILL COMMUNITY PLAYHOUSE PROJECT**

Action: *1) **Accepted** as Complete the Community Playhouse Project in the Final Amount of \$2,344,807.00; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*

3. **APPROVE SUBDIVISION IMPROVEMENT AGREEMENT FOR MISSION RANCH PHASE VI (TRACT 9424)**

Action: *1) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 2) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following the Recordation of the Development Improvement Agreement.*

4. **APPROVE SUBDIVISION IMPROVEMENT AGREEMENT FOR COYOTE ESTATES PHASE VII (TRACT 9461)**

Action: *1) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 2) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following the Recordation of the Development Improvement Agreement.*

5. **ADOPT ORDINANCE NO. 1606, NEW SERIES**

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1606, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 8.8 ACRES, FROM COUNTY A-20 TO PUBLIC FACILITY, APPLICATION ZA-02-14 (PORTION OF APN 817-13-017).*

6. **ADOPT ORDINANCE NO. 1607, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1607, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.22.010 (Establishment of boards and commissions) OF CHAPTER 2.22 (Master Provisions for Boards and Commissions) OF TITLE 2 (Administration and Personnel) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING BOARDS AND COMMISSIONS AND EXTENSION OF APPOINTMENTS THERETO.

7. **ADOPT ORDINANCE NO. 1608, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1608, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.56.030 (Terms of office) OF CHAPTER 2.56 (ARCHITECTURAL AND SITE REVIEW BOARD) OF TITLE 2 (ADMINISTRATION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING TERMS OF OFFICE FOR ARCHITECTURAL AND SITE REVIEW BOARD MEMBERS.

City Council/Redevelopment Agency Action

CONSENT CALENDAR:

Council/Agency Member Sellers requested that item 8 be removed from the Consent Calendar and Mayor Pro Tempore/Vice-chair Chang requested that item 11 be removed from the Consent Calendar.

Action: On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Chang, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, **approved** Consent Calendar item 9 as follows:

9. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 19, 2003**

Action: **Approved** the minutes as written.

Redevelopment Agency Action

8. **FACADE IMPROVEMENT PROGRAM**

Agency Member Sellers stated his support of the project as it makes sense in this case to approve double reimbursement. He also agreed that it made sense to approve double reimbursements at an administrative level. However, the staff report indicates that the economic development committee could be asked to review and provide input on the criteria for the double reimbursement. He requested that the criteria be brought back to the Council for its review of the criteria that might trigger the double

payment of the façade improvement program. He wanted to make sure that the Council and staff are clear on what the criteria is so that staff can proceed quickly with requests.

Agency Member Carr indicated that the economic development committee discussed this issue once before. He said that the façade program is currently administrative and that there are several circumstances where double reimbursements could be handled administratively as well.

Action: *On a motion by Agency Member Sellers and seconded by Vice-chair Chang, the Agency Board, on a 4-0 vote with Board Member Tate absent: 1) **Approved** A ‘Double’ Façade Improvement Program Reimbursement For The New Mama Mia’s Restaurant At 275 East Dunne Avenue; and 2) **Authorized** Staff To Amend The Façade Improvement Program To Allow For “Double” Reimbursements To Be Applied Administratively, Based On Criteria To Be Established.*

Action: *It was the consensus of the Agency Board to **direct** staff to return with the double reimbursement criteria for its review and approval.*

City Council Action

CONSENT CALENDAR: (Continued)

10. SUBDIVISION, SD-02-08: SHAFER-BAMDAD

Mayor Kennedy stated that he resides within 500 feet from this particular development and would be stepping down from discussion. He excused himself from the Council Chambers.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Mayor Kennedy and Council Member Tate absent, **Took No Action** Thereby Concurring with the Planning Commission’s Decision Regarding Approval of the Subdivision Map .*

Mayor Kennedy resumed his seat on the dias.

11. ADOPT ORDINANCE NO. 1605, NEW SERIES

Mayor Pro Tempore Chang excused herself from the Council Chambers, indicating that she resides within 500 feet of the property.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Waived** the Reading, and **Adopted** Ordinance No. 1605, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL*

APPROVING AN AMENDMENT TO ORDINANCE NO. 1576, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-02: E. DUNNE - GREWAL TO ALLOW FOR A ONE-YEAR EXTENSION OF TIME (APN 728-11-026) by the following vote: AYES: Carr, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Chang, Tate.

Council Member Chang resumed her seat on the dais.

City Council Action

PUBLIC HEARINGS:

12. PUBLIC HEARING FOR EXEMPTION TO UNDERGROUND UTILITIES – 600 AND 602 SAN PEDRO AVENUE

Deputy Director of Public Works Bjarke presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Granted** Exemption To The Requirement To Underground Utilities With Payment In Lieu For The Proposed Development At 600 And 602 San Pedro Avenue.*

13. ZONING AMENDMENT, ZA-02-11: SHAFER-BAMDAD – Ordinance No. 1609, New Series

Mayor Kennedy recused himself from this item as he resides within 500 feet of this project. He stepped out of the Council Chambers.

Director of Community Development Bischoff presented the staff report. He informed the Council that the property to the north on Morgan Avenue are zoned as one acre minimum lot sizes, to the south, lots vary in size from 13,000 square feet to 7,000 square feet. He said that the RPD overlay is to ensure that there is a proper transition in lot sizes from one area to another. He said that it is staff's belief that the applicant has made the appropriate transition to the adjacent land uses and that the circulation pattern is desirable. He informed the Council that the City's zoning ordinance allows for parcels of one acre or larger in size to have two mature livestock on the property and that it was his understanding that one or more of the parcels in the Morgan Lane/Avenue have livestock. There is a provision on City code that states that where there is livestock, they need to be kept at least 100 feet from any other dwelling. Although the applicant has done a good job of placing larger lots adjacent to the Morgan Lane area, the lots are only 24,000 square feet and much smaller than an acre. Therefore, there may be a situation where the owners of property to the north have livestock with a requirement of 100 feet distance from any home when these homes were built. He noted that the homes may potentially encroach in the 100 foot area. The Planning Commission, after hearing concerns expressed by neighbors to the north,

requested that the homes located adjacent to Morgan Lane be moved as close to Shafer as possible and that the setback to the north be maximized. Also, that language be included in the CC&Rs or the disclosure to perspective homeowners that there may be large livestock on the adjacent properties to the north. With these two conditions, both the Planning Commission and staff are recommending approval of the RPD this evening.

Council Member Sellers said that he was anxious about having homes less than an acre adjacent to acre homes for the reasons identified by staff. He noted that the staff report states that it should be noted that existing open enclosures to the north may need to be relocated upon construction of the new development. He requested clarification as to the intent of these statements as it appears that the existing neighbors may be required to move their pens.

City Attorney Leichter stated that the municipal code requires a 100-foot separation between the corral and any dwelling unit. The Planning Commission was trying to accommodate the existing property owners to the north by requiring that these units be placed as far down as possible. However, the onus falls upon the owner of the livestock to maintain the 100-foot separation.

Director of Community Development Bischoff indicated that the City has a code enforcement program but that this program is not proactive when it comes to issues such as these. He stated that City staff responds to complaints and that unless there are complaints received about this, staff would not have a reason to investigate the location of livestock.

Council Member Sellers stated that he would like to avoid complaints and therefore was anxious with a situation where a home owner had livestock for ten years with someone else wanting to build, creating a situation where an individual is forced to do something different.

Council Member Carr inquired as to the contact that has taken place with the property owners to the north and whether the property owners understand of the potential conflict attributed to a development coming in after them that would require the 100-foot pen separation.

Director of Community Development Bischoff informed the Council that the adjacent property owners have been provided notice of the two hearings. Therefore, they have had an opportunity to attend both meetings. It was his understanding that a property owner addressed the Planning Commission. He was not aware if the City has heard from other residents in the area. He said that there are at least two properties that would be affected by this subdivision. He said that in theory the lots could be made smaller based on the R1-12,000 zoning designation.

Council Member Carr expressed concern that a homeowner with an existing land use and livestock on their property by a development coming in after may affect the use of their property. He stated that he understood that the onus of the ordinance is on the property owner but that it seems that before you get to this situation where the City is asking a resident to change their existing use that better conversations could be taking place. He inquired whether the applicant has held discussions with the existing neighbors.

Mayor Pro Tempore Chang inquired whether the City Attorney could suggest any other alternatives that the City could remedy the situation (e.g., new property owners could be provided with disclosure statements).

City Attorney Leichter said that other than amending the municipal code, there are no other alternatives. It was asked whether the code was in effect at the time when the property was brought into the City and that it was staff's belief that the property has been in the City for some time. She stated that in the past seven years, this has not been an issue. Therefore, it was her belief that adjacent property owners tend to work out the situation. She indicated that the Planning Commission requested, as a condition of approval, that the developer notifies potential homebuyers that there could be livestock to the north. However, there is no "right to have animals" as there is a "right to farm" as phrased in the municipal code. Should the Council go this far, it would be contrary to the provisions of the municipal code. She said that even if provided with a notice of conditions, the property owners could still report the condition to code enforcement and request compliance.

Council Member Sellers inquired as to the type of fencing that would be provided.

Director of Community Development Bischoff said that it was his understanding that a six-foot good neighbor wood fence would be installed.

Mayor Pro Tempore Chang opened the public hearing

Vince Burgos, Development Process Consultants, informed the Council that this is an issue that he has been looking into to keep the project moving ahead. He said that a precedent has been set on the four lots that exist on Shafer for some time and that it has not been an issue to date. He said that the developer is willing to take into consideration moving the homes, providing as large a setback as possible. He indicated that as part of the Measure P commitment, this project would provide a certain variation of square footage on the home sizes, noting that these are the largest homes at this location. Therefore, substantial footprints and single story units have been designed. The developer is also willing to coordinate a disclosure that states that individuals who purchase the homes up against these properties are aware that livestock are allowed on the adjacent one acre lots. A disclosure could also be placed on the property itself.

Rafi Bamdad, applicant, stated that it has been almost three years since he purchased the property and that before he purchased the property, one of the initial concerns he had was the placement of the existing livestock. He said that planning staff conveyed to him that the code states that it is the burden of the owner of the livestock to adhere to the code and maintain a 100-foot separation. He said that this project has gone through two Measure P processes and that he received the highest score under this category. He stated that he would agree to comply with any City requirements, increasing the size of the lots to provide the transition required. He indicated that he would agree to provide a disclosure to future homebuyers that there is an existence of livestock on the neighboring properties. He stated that he would try his best to push the building as far as possible within the setbacks to the front.

No further comments being offered, the public hearing was closed.

Council Member Sellers stated that he was comfortable in proceeding with this application based on the comments received this evening. If future homebuyers understand what to expect, it would minimize the likelihood of any problems.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Council Member Tate and Mayor Kenned absent, **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1609, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Zoning Amendment Ordinance No. 1609, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT PLAN FOR A 15-UNIT SINGLE FAMILY PROJECT LOCATED WEST OF HILL ROAD AND NORTH OF CONTE WAY, IN A R-1(12,000)/RPD ZONING DISTRICT (APN 728-10-005; ZA-02-11: SHAFER-BAMDAD)** by the following roll call vote: AYES: Carr, Chang, Sellers; NOES: None; ABSTAIN: None; ABSENT: Kennedy, Tate.*

Mayor Kennedy resumed his seat on the dias.

14. AN ORDINANCE AMENDING CHAPTER 10.56, CHAPTER 10.64 AND CHAPTER 10.68 OF THE CITY OF MORGAN HILL MUNICIPAL CODE REGARDING BICYCLES AND COASTER OPERATION, AND FINES THEREFORE – Ordinance No. 1610, New Series

Deputy Director of Public Works Bjarke presented the staff report.

Council Member Sellers inquired as to the benefit of licensing a bicycle if it was made optional? He noted that it is being proposed to prohibit scooters on streets and sidewalks.

Mr. Bjorke responded that the benefit of licensing a bicycle would be a recovery mode if it is stolen. Staff could advise the public that it is a service versus a requirement. He stated that it was his understanding that the City would be taking the licensing from the police department altogether with the action before the Council. He indicated that it is unlawful to ride a bike in any areas zoned commercial in the city. Regarding the scooters, they would be prohibited in areas zoned for commercial uses, streets, and paved ways. This would also apply to the use of roller skates.

Council Member Carr did not believe that it made a lot of sense to prohibit an individual from rollerblading or using scooters to access downtown.

City Attorney Leichter stated that the reason the proposed amendment would limit the use of scooters, rollerblades, etc., in commercial zones, is attributed to the higher volume of pedestrian traffic in commercial zones. This is the reason that staff is recommending lowering the age for bicycle riders in the commercial zones.

Council Member Carr felt that pedestrian traffic should be on the sidewalk. He did not understand why the City would not allow an individual who wanted to ride their scooter or rollerblade on the side of the road that bicycles are allowed, to access the downtown to conduct business.

Mayor Kennedy opened the public hearing.

Bob Eltgroth, Chairman of the Bicycle and Trails Advisory Committee (BTAC), indicated that this portion of the code was the least interest to the Committee. However, since bicycles were already mentioned in this part of the code, the BTAC tried to clear up the language rather than change the meaning of this section of the ordinance.

Mayor Kennedy inquired how scooters and skate boarders should access the downtown area.

Mr. Eltgroth said that from a bicyclist standpoint, he would prefer seeing individuals with scooters or rollerblades using the sidewalks because bicyclist should be on the street at this point. From a pedestrian view point, scooters and rollerblades should be disallowed as they are in some shopping centers. Regarding bicycle registration, there did not seem to be a lot of interest in licensing. It was suggested that the Taste of Morgan Hill would be a good place for the police department to register bicycles. He said that this is an issue of recovery. He indicated that it is being proposed that the City implement the City of Palo Alto's fine schedule. He said that the BTAC compared the age limit to those of other cities, indicating that they wanted to bring the age limit in line with the Cities of Campbell, Cupertino, and Milpitas.

Mayor Kennedy inquired whether more consideration should be given to skate boarders and scooters as he felt that the City would be prohibiting them without providing users with an alternative. He felt that this was asking for problems. He recommended that the City look at how other cities handle this specific issue before proceeding with the ordinance amendment. He inquired as to the urgency of taking action this evening.

City Attorney Leichter informed the Council that the BTAC has been working a long time on the proposed ordinance amendment, including her office and public works staff. She felt that it would be appropriate for the Council to approve the ordinance this evening, noting that staff would need to take a look at safety concerns and other issues in regards to skate boards and coasters in the downtown area. Staff could return with a report to the Council once the safety issues have been investigated.

Mr. Eltgroth indicated that the other matter of urgency is that the majority of the members on the BTAC who have been working on the draft ordinance would conclude their appointments on April 1, 2003. He indicated that the other three amendments were more important to the BTAC than the sidewalk issues.

Geno Acevedo indicated that he has a skateboard and that he rollerblades from time to time with his children. He stated that he does not have an electric scooter and that he may have one someday to transport himself. He indicated that he could travel at approximately 15 miles per hour. He felt that these modes of transportation should be allowed on streets, especially if used for transportation. He

recommended that the Council not prohibit their use for transportation, especially with the cost of gas. He recommended the Council delete the portion of the ordinance relating rollerblades, scooters and skate boards.

No further comments being offered, the public hearing was closed

Mayor Pro Tempore Chang supported deferring action on the roller skates and skateboards. She indicated that she used to ride her bicycle to the downtown area. She understands that skateboarders were a nuisance but felt that their use was what a small town was all about. She recommended the elimination of section 4, approving the remainder of the ordinance.

City Attorney Leichter felt that it would be wise to receive input from the police department on any safety concerns that they might have about allowing skateboards and coasters in the streets in the downtown.

Mr. Eltgroth clarified that skateboards and scooters are already disallowed. The BTAC is recommending that the language be cleaned out. Should the Council eliminate section 4, the City would still be disallowing them.

Mayor Kennedy recommended that section 4 be retained.

In response to Mayor Pro Tempore Chang's question, City Attorney Leichter indicated that rollerblades, skateboards and coasters would be prohibited at the Community and Cultural Center or any other municipal structure/lots with the adoption of section 4.

Council Member Carr stated that when he thinks about a municipal structure, a park or the area in front of the Civic center would be an appropriate area for bicycles, skateboards, etc., to be used.

Council Member Sellers said that there is the difference between what the law states, and ought to state, and what practice is to be applied in certain circumstances. He did not believe that it was feasible to have this mode of transportation along Monterey for a variety of reasons due to its layout. He said that these modes of transportation are too fast for pedestrians and too slow for the traffic going through the downtown. He felt that it would be very dangerous to be on rollerblades on Monterey. Therefore, he stated his support of having section 4 being reviewed. However, he suspected that the conclusion would be the one that has already been drawn and to include the language on the municipal code. He recommended that this section be made more accommodating. He noted that the ordinance is not currently being enforced. He felt that the City would be inviting a bad situation to get potentially worse down the road if not included in the code. He stated that he would agree to move forward with the ordinance as written, having staff review section 4, and look at alternatives that might be considered understanding the Council's goal.

Mayor Kennedy recommended sending section 4 to the Parks and Recreation Commission.

Council Member Sellers said that the language being recommending is cleanup language. He would support adoption of the ordinance this evening but ask that the Parks and Recreation Commission review of section 4.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate a, **Waived** the Reading in Full of Ordinance No. 1610, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (4-0, with Tate Absent) **Introduced** Ordinance No. 1610, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DELETING SECTIONS 10.56.010 THROUGH 10.56.060, INCLUSIVE, AND SECTION 10.56.090 AND AMENDING CHAPTER 10.56, CHAPTER 10.64 AND CHAPTER 10.68 OF THE CITY OF MORGAN HILL MUNICIPAL CODE REGARDING BICYCLES AND COASTER OPERATION, AND FINES THEREFORE** by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, referred Section 4 of the Ordinance to the Parks and Recreation Commission and that it forward its comments/recommendation(s) to the Council.*

15. GPA 02-09: CITY OF MORGAN HILL-GENERAL PLAN MAP CORRECTIONS – Resolution No. 5650

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5650, Approving General Plan Map Corrections.*

OTHER BUSINESS:

16. APPROVAL OF STORM WATER MANAGEMENT PLAN AND SUBMISSION OF APPLICATION FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II STORM WATER PERMIT

Deputy Director of Public Works Bjorke presented the staff report and reviewed the City's obligation under the NPDES Phase II Permitting Program. He indicated that the City is under a Federal mandate to file for permit coverage by March 10, 2003. He requested Council approval of the City's storm water management plan and authorization to submit the City's notice of intent to become permitted.

Mayor Kennedy stated that he has seen some of the City's catch basins that have a large open section and that some have a bar that goes across the basin to keep small objects out of the city's storm drain. He inquired whether the City's ordinance requires a cross bar on the upper section of the basin to keep large items out of the storm drain?

Mr. Bjorke indicated that the City's design standard requires a bar across a catch basin.

Mayor Pro Tempore Chang inquired how it would be determined how successful the City's program would be.

Mr. Bjorke said that when the City develops its program, the City is required to provide six minimum control measures that would be supported by a host of best management practices which are measurable. The State has indicated that if a city can incorporate the best management practices in the City's program, the assumption is that the City will have cleaner water quality. He agreed that there has to be some analysis on how successful the City is in protecting the storm water quality. He said that the assumption is if a city employs these best management practices, a city would be doing a better job in providing cleaner water quality.

Council Member Carr inquired whether the City would become the enforcing agency of the Clean Water Act.

Mr. Bjorke responded that the State would retain the enforcement authority. He said that the City is mandated to have a quantifiable program that addresses the minimum measures that the State requires. In terms of enforcement at a construction site, the State would expect the City to have its own internal policies about inspecting and looking for sediment control. The State is asking the City to police its own policies and that if the City sees something that appears to be a problem, the City is to contact the State to look at the instance being discussed. Legally, the City is not the enforcer of the Clean Water Act but that the City is required to have its own program that has the same end to it.

Council Member Carr said that the City is trying to meet identifiable goals. If the City is meeting the goals, he inquired whether the City would be able negotiate with the State and continue with its practices. If the City is not meeting its goals, would the City be heading down a path where individuals would not longer be able to wash cars in driveways, or that water going through the City's storm system will have to eventually go through the City plant, raising the cost of this. He inquired how important it is that the City meets the goals being identified to avoid future impacts.

Mr. Bjorke stated that it would be important to achieve the City's goals. He did not know how much monitoring the City would receive from the State, so it would be difficult to state. He said that it has been his experience that if a city is proactive, honest, and demonstrates a willingness to work with the State; the State will leave a city alone. He said that there are provisions in the permit that should there be some demonstrated water quality problem taking place in a community, the State can require more restrictive measures, including testing of storm water and restrictive control measures. He does not see this becoming a problem as he was comfortable with the City's program and with the relationship with

the Regional Quality Board. He indicated that the State recognizes that a city the size of Morgan Hill does not have the resources that larger cities have and would not be held to the higher standards that larger cities are held to.

Mayor Kennedy opened this item to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate Absent, **Approved** Storm Water Management Plan; and **Directed** Staff to Submit Notice of Intent to Regional Water Quality Control Board for NPDES Phase II Permit Coverage.*

17. POSSIBLE LOCATIONS FOR A NEW MORGAN HILL POLICE FACILITY

Director of Business Assistance and Housing Services Toy presented the staff report. He said that staff has been working with the Chief of Police in visiting other sites that were listed for sale. He indicated that staff did not find another alternate property that would warrant additional cost in research at this time. Staff recommended that the Council allow staff to continue negotiations for the Vineyard facility. Should these negotiations break down, he recommended that the Council direct staff to pursue other locations. He said that staff would report back periodically to the Council with a status update on the project prior to bringing forward any agreements.

Council Member Sellers noted that staff indicated that it would not be pursuing other sites unless the Council identifies another site. He inquired as to the circumstances that the Council would consider other sites.

Mr. Toy recommended that the City continue to pursue the Vineyard facility. Should there be a reason that staff cannot negotiate terms, staff has identified another building that can be listed as a possibility for consideration. He said that staff could pursue this building and that there may be other buildings that may be placed on the market.

Mayor Pro Tempore Chang indicated that she was looking at the lease rate. She noted that the lease rate for the Vineyard building as at \$1.25 triple net and the lease rate for the other buildings were cheaper at 75 cents and 85 cents per square feet. She inquired whether staff has copies of the Business Journal as they publish a rate for the area. She inquired if there was an average lease rate.

Mr. Toy indicated that buildings in the industrial area are leasing for an average of \$1 per square foot, based on the buildings' condition. Staff did not believe that other buildings warrant additional research at this time.

Mayor Pro Tempore Chang felt that the price and the lease rate of the property is higher than the other properties. She recommended that in negotiations, staff conduct a different market analysis. She felt that the City should look at a market analysis and then make an offer accordingly.

Mr. Toy informed the Council that the Chief of Police toured the alternate building this afternoon.

Chief of Police Galvin informed the Council that the alternate building cannot be used based on the parking problem.

Mayor Pro Tempore Chang requested that staff provide the vacancy rate for the same type of building in this area, noting that this parcel appears to be the most expensive building.

Council Member Sellers noted that the Vineyard building has completed a lot of the work where an alternate building would require additional cost to convert the facility into a police facility.

Mayor Pro Tempore Chang said that a market analysis would help identify the market rate for a building and that any prudent buyer would request for the analysis.

Mr. Toy noted that in a staff report presented to the Council in December 2002, staff compared the Vineyard building to comparable sales and market/least rates. He said that the 18300 Sutter Boulevard building could be considered as a possible location. He noted that this is a new building with lots of possibility and is located in a high profile location in a class A business park. He said that the building may not be good for a civic use at this location but could be a possibility. Staff recommended that it be allowed to continue with negotiations for the Vineyard facility with the thought should staff not be able to negotiate an agreement that makes sense for the City, that staff be directed to pursue alternatives (e.g., buildings on the list or other alternatives that have not been presented to the Council).

Council Member Carr felt that it was time that the Council gives real direction to staff. He said that he has been one of the Council Members who have asked for additional information, looking at other buildings and considering other things. He said that he has seen enough to point to the Vineyard facility as the solution to try to do something for the police department in an immediate fashion.

Council Member Sellers stated that because the Vineyard site is new and the way it was constructed, the City needs to think of this as an investment in an asset that would give the City a lot of options. Should the opportunity arise or the City change its mind five years from now, he felt that the Vineyard facility would remain an asset that would be worth a lot. He supported considering a newer facility as opposed to an older facility. Therefore, he was comfortable with moving forward with the Vineyard site.

Mayor Kennedy supported the recommended action, including Mayor Pro Tempore Chang's recommendation to conduct a market analysis, including a vacancy rate study.

Mayor Kennedy opened the public comment. No comments were offered.

Action:

*On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate Absent, **Directed** Staff to Continue Negotiations With the Developer of the Vineyard Facility for Its Acquisition and Only Pursue Other Properties if the Negotiations Break Down; and that staff **conduct** a market analysis and a vacancy rate study.*

18. ARCHITECTURAL AND SITE REVIEW BOARD PERFORMANCE REVIEW

Senior Planner Linder presented the staff report.

Mayor Kennedy referred to the skills of the ARB and inquired as to what skills are needed on the Board?

Ms. Linder said that the Board has representation of an architect, a landscape architect, a designer and a construction manager. She felt that the City has filled the four basic needs as far as areas of expertise. She said that the fifth Board seat could be opened to any area of expertise.

Council Member Sellers noted that the Council will be coordinating appointments to the ARB Board and the Planning Commission in Spring 2003. He said that as long as there are no legal constraints to having an individual who is not a resident, the Council can decide if it wishes to appoint a non resident to the Board. He said that the City is fortunate that it has the technical areas covered but that there may be a time in the future that it does not have the technical areas covered. He said that in the future, he would be inclined that if someone works in Morgan Hill and had the technical expertise, this would be the traits that the Council should look for as opposed to a resident that did not have a particular expertise. He would support a non-resident who has the technical expertise.

Mayor Kennedy noted that this is a highly technical board and felt that the technical skills are more important, versus the residency requirement.

Ms. Linder indicated that staff and the Board have conducted a review of the preliminary draft of the guidelines. The City needs to get back to the consultant and direct that a draft be put together. She indicated that it would be three months before the City receives a draft as there remains a lot of work to be done in this area.

Council Member Carr said that he was pleasantly surprised to hear the numbers about how the Board is more efficient in its review of applications. As the City goes through difficult budgeting decisions, he inquired whether the review of things like the ARB, that the Council would review from a budget/cost stand point.

City Manager Tewes indicated that the Board and staff support are financed by application/development processing fees. He said that earlier this year, at the conclusion of the audit report on development processing, staff indicated that some of the recommendations need to be financed by increases. The Council, in general, stated that it was comfortable with the increases. Therefore, staff would be returning soon to the Council with increases in development processing fees to pay for these costs. Therefore, there is no general fund or general taxpayers' subsidy of these activities.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *It was the consensus of the majority of the Council that it would support opening Board seats to non city residents based on technical expertise. Also, at time of Planning*

Commission and ARB member selection, the Council can encourage those unsuccessful on the Planning Commission application to be appointed to the ARB.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Pro Tempore Chang and Mayor Kennedy requested that staff return with what is available regarding green business program certification.

Mayor Pro Tempore Chang indicated that she does not send Council members e-mails with any attachments as someone is sending e-mails with viruses in her name.

RECONVENE TO CLOSED SESSION

City Attorney Leichter indicated that the Council would reconvene to closed session to discuss two closed session items.

Mayor/Chairman Kennedy noted that there was no one in attendance to address the Council/Agency Board regarding closed session items. He adjourned the meeting to Closed Session at 9:57 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 10:59 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:00 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY